

**MARICOPA COUNTY FLOOD CONTROL DISTRICT BOARD OF DIRECTORS MINUTE BOOK**

**July 24, 2002**

The Board of Directors of the Flood Control District of Maricopa County, Arizona, convened at 9:00 a.m., July 24, 2002, in the Board of Supervisors' Auditorium, 205 W. Jefferson, Phoenix, Arizona, with the following members present: Don Stapley, Chairman; Fulton Brock, Vice Chairman; Andy Kunasek, Max W. Wilson and Mary Rose Wilcox. Also present, Fran McCarroll, Clerk of the Board; Shirley Million, Administrative Coordinator; David Smith, County Administrative Officer and Paul Golab, Deputy County Attorney. Votes of the Members will be recorded as follows: (aye-no-absent-abstain)

**MINUTES**

Motion was made by Director Brock, seconded by Director Wilcox, and unanimously carried (5-0) to approve the minutes from meetings held on May 16, and June 10, 2002.

**PERSONNEL**

Motion was made by Director Brock, seconded by Director Wilcox, and unanimously approved (5-0) to approve the personnel agenda. (List on file in the Clerk of the Board's Office.)

**EASEMENTS AND RIGHT-OF-WAY DOCUMENTS**

Motion was made by Director Brock, seconded by Director Wilcox, and unanimously approved (5-0) to approve easements, right-of-way documents, relocation assistance, and appraisal services contracts under \$5,000 per resolution FCD 87-12; escrow instructions per resolution FCD 87-13; license procedures and fee schedules per resolution FCD 97-02; and payment of tax notices per resolution FCD 97-07 for Flood Control purposes. (ADM1910)

**Doubletree Ranch Road Regional Drainage Project (Per: Resolution FCD 96-03A)**

Item 9903.032, Temporary Construction Easement and Agreement for Flood Control Purposes from Lester L. Penterman and Margaret M. Penterman to Flood Control District of Maricopa County for the sum of \$500.00.

**Skunk Creek "Floodprone Properties Acquisition Project" (Per: Resolution FCD 2001R011)**

Item A008.001, Warranty Deed from James F. McKeag and Kasey L. McKeag to the Flood Control District of Maricopa County for the sum of \$234,000.00.

Item A008.001, Escrow Instructions.

Item A008.001, Relocation Assistance Entitlements for James F. McKeag and Kasey L. McKeag in the amount of \$30,000.00.

Item A008.002, Warranty Deed from Joe E. Hines and Claudia M. Hines to the Flood Control District of Maricopa County for the sum of \$243,000.00.

Item A008.002, Escrow Instructions.

Item A008.002, Relocation Assistance Entitlements for Joe E. Hines and Claudia M. Hines in the amount of \$33,500.00.

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Item A008.009, Warranty Deed from Donna M. Funk and Bradley E. Proulx to the Flood Control District of Maricopa County for the sum of \$275,000.00.

Item A008.009, Escrow Instructions.

Item A008.009, Relocation Assistance Entitlements for Donna M. Funk and Bradley E. Proulx in the amount of \$30,000.00.

Item A008.010, Warranty Deed from Rose Regina Eller to the Flood Control District of Maricopa County for the sum of \$290,000.00.

Item A008.010, Escrow Instructions.

Item A008.010, Relocation Assistance Entitlements for Rose Regina Eller in the amount of \$35,000.00.

Item A008.013, Warranty Deed from Patricia E. Parks to the Flood Control District of Maricopa County for the sum of \$143,000.00.

Item A008.013, Escrow Instructions.

Item A008.013, Relocation Assistance Entitlements for Patricia E. Parks in the amount of \$30,000.00.

**PUBLIC HEARING – PERMIT TO WORK IN FLOOD CONTROL DISTRICT REAL PROPERTY**

This is the time scheduled for a public hearing in regard to adopting Resolution FCD 2002R002, Permit to Work in Flood Control District of Maricopa County Real Property and Fee Schedule. Motion was made by Director Brock, seconded by Director Wilcox, and unanimously approved (5-0) to adopt this resolution which will supercede Resolution FCD 97-02 dated September 24, 1997, covering the permit procedures and fee schedules for the use of Flood Control District real property. (C69020886) (ADM1904)

**RESOLUTION FCD 2002R002  
PERMIT TO WORK  
IN  
FLOOD CONTROL District OF MARICOPA COUNTY  
REAL PROPERTY**

**WHEREAS**, the Flood Control District of Maricopa County, hereinafter referred to as the District, has been established in accordance with provisions of Arizona Revised Statutes Title 48, Chapter 21 for the purpose of acquiring, constructing, maintaining and operating flood control facilities to control the waters of rivers and streams, and other surface waters to prevent the flooding of property and the endangering of lives of people, and

**WHEREAS**, the laws of the State of Arizona Title 48, Chapter 21, authorize the Board of Directors of the District to control and manage said structures, channels and associated District real property; and

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**WHEREAS**, it is necessary in the public interest that all uses within the District real property for flood control structures and channels by individuals, corporations and political subdivisions be regulated and controlled so that said District real property may be effectively utilized and maintained for their primary purposes of flood control structures and ancillary services, and

**WHEREAS**, on September 24, 1997, the Board of Directors through its Chairman adopted Resolution FCD 97-02 to establish fees and usage of District real property, and the District desires to supersede that Resolution and adopt the following Resolution.

**NOW, THEREFORE, BE IT RESOLVED** that no person, corporation, association or other political subdivision shall, without first obtaining a permit therefore, enter District real property for the purpose of performing construction of any kind, reconstruction, removal, repair, maintenance or any other work or activities, including, but not limited to the following:

1. Pavement, curbs, gutters, driveways, sidewalks, and roadways;
2. Drainage or flood control facilities;
3. Grading, oiling, graveling or any surfacing of any road, street, alley or way;
4. Water, gas, sewer or other types of pipelines;
5. Irrigation, wells, wastewater, water quality and groundwater recharge facilities;
6. Utility lines such as electric, television, telephone, communications and other facilities above ground or sub-surface;
7. Structures, signs (whether temporary or permanent);
8. Temporary construction, parking and storage yards;
9. Temporary ingress/egress, including but not limited to field studies, field investigations, recreational activities and uses of any kind;
10. Plantings, landscaping, watering and/or drainage systems, and decorative placements.

**BE IT FURTHER RESOLVED** that the Board of Directors of the District hereby authorizes the Chief Engineer and General Manager of the District or his designated agent to issue such permits and to take such actions designated as District actions herein. "District" when used hereafter in this Resolution shall refer to the Board of Directors, the Chief Engineer and General Manager or his designee.

**BE IT FURTHER RESOLVED** that all applications for such permits shall be in writing on such form as required by the Chief Engineer and General Manager, unless waived in writing by the Chief Engineer and General Manager. The application shall be accompanied by no less than six (6) copies of plans, reports and calculations or similar exhibits of a size and in the quantity prescribed by the District, sufficient to clearly illustrate the location, dimensions, motive, method and purpose of the proposed work.

**BE IT FURTHER RESOLVED** that the District is authorized to require permit applicants to take all actions, precautions and measures that the district finds necessary to maintain the integrity of the district's real property where issues of public safety and liability are involved, such as but not limited to permits which impact dams, flood retarding structures and levees.

**BE IT FURTHER RESOLVED** that the District may require part or full time qualified\_independent inspection of the permitted activity, at the cost of the Permittee, when it is determined by the District that the permit involves a significant issue of public safety or potentially significant impact to District real

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property. Such determination and requirement will be made solely by the District on a case-by-case basis.

Applicants for such permits may be either a design engineer, developer or a contractor; however, the work may be performed only by (1) a permitted contractor, (2) utility company, (3) governmental agency, or (4) resident owner of residential property, where the applicant proposes to do the work. Permits shall be issued only to the person, corporation or political subdivision making application therefore and may not be assigned or transferred to another person, corporation or political subdivision by the Permittee. If a Permittee assigns his permit to another, the permit shall become void. A permit shall be valid for the time as indicated on the permit, unless canceled or revoked sooner. If work is not completed within the allotted time period, an extension may be granted. If no work is performed after a permit is obtained, the Permittee may apply for cancellation of the permit in writing, prior to expiration.

**BE IT FURTHER RESOLVED** that before any permit is issued, the applicant shall deposit with the District an amount in legal tender acceptable to the District in accordance with the schedule of fees attached hereto as EXHIBIT A and the estimated value of or a deposit for any easements required.

**BE IT FURTHER RESOLVED** that if any work is undertaken prior to securing a permit, all work shall cease until the Chief Engineer and General Manager or his agent determines whether the District real property should be restored to its original condition or grants a permit in accordance with this resolution. The Chief Engineer and General Manager may require the District's real property to be restored to its original condition prior to granting a permit, and for any unpermitted activity shall assess an After-The-Fact administrative fee of \$1,500 in addition to the normal inspection, easement payment and rental fees, if applicable, the normal application fee, and the review fees prior to issuance of a permit. For all unpermitted activities by others on District real property, the District is authorized to recover its full cost to investigate and correct unpermitted activity and the District is authorized to recover all costs associated with any subsequent permit related to the unpermitted activity. The determination of whether to impose full cost recovery will be made solely by the District on a case-by-case basis in consideration of risk to public safety or in consideration of impacts to District real property caused by the unpermitted activity. The District may also seek to recover from those making unpermitted use of District real property any and all cost and/or claims by third parties for personal injury and/or damages to real or personal property caused by the unpermitted use. The above conditions will be in addition to any civil or criminal penalties assessed against any trespassers or other entities using District real property without first obtaining a permit.

**BE IT FURTHER RESOLVED** that the District shall furnish to the applicants engineering and inspection services to determine if the improvements constructed are in accordance with the specifications and details for permits granted. Any persons or corporation, association, or political subdivision doing work under any permit as set forth in this resolution shall notify the District at least two full working days in advance of the time and place the work will begin.

**BE IT FURTHER RESOLVED** that this resolution shall not prevent any person, corporation or political subdivision from making excavation to maintain any pipe or conduit lawfully on or under any District real property, as may be necessary for the preservation of life or property, when an urgent necessity arises during the hours that the offices of the District are closed. Any person, corporation or political subdivision making emergency use shall call the District's Blue Stake contact, provide written notification within 24 hours to the District via fax with details of emergency measure and apply for a permit within three (3) business days after the District offices are again opened or the person, corporation or political subdivision

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making emergency use of District real property will be required to pay the additional fees as mentioned above. The full cost of remedying any impact to the function or operation of District real property will be assessed to and paid by the person, corporation or political subdivision making such emergency use of District real property. The District may also seek to recover from those making emergency use of District real property all costs and/or claims by third parties for personal injury and/or damages to real or personal property caused by the emergency use.

**BE IT FURTHER RESOLVED** that all work done in District real property shall be done in accordance with the terms and conditions of the permit.

**BE IT FURTHER RESOLVED** that the District shall require each applicant as referred to in this resolution, before granting the permit, to deposit with the District a Performance Bond or a Security in Lieu of Performance Bond in an amount as determined by the District, not to exceed \$500,000 as a guarantee that the work will be completed in accordance with the permit. The Chief Engineer and General Manager or his agent at his sole discretion may waive the Security or Performance Bond.

The bond shall be joint and several in form and made payable to the District. The bond shall be signed by the applicant, and a qualified surety company authorized to transact business in the State of Arizona. The condition shall be that the applicant will faithfully complete the work described in the application in accordance with the plans, specifications and conditions thereof.

The bond shall be released after all terms and conditions in the permit have been met and upon satisfactory completion and acceptance of the work, or may be canceled after the applicant has provided other security satisfactory to the District which will cover obligations that remain. The bond is subject to cancellation as noted above, or may be terminated after all obligations are fulfilled which were "permitted" prior to the District receiving cancellation notice from surety company. The surety company shall not cancel, change or amend any bond without thirty days prior written notice having been served on the District.

**BE IT FURTHER RESOLVED** that the permit applicant shall be responsible for all liability for personal injury or property damage arising out of or related to work performed by the Permittee under permit. Permittee shall be required to indemnify and hold harmless the District, its agents, officers, boards, employees, successors or assigns against any and all claims, actions, costs or expenses for property damages or personal injuries caused by or related to the rights granted in the permit. The Permittee shall defend, indemnify and hold them, and each of them, harmless from such claims, including claims alleging the joint negligence of the District, its officers and employees and the Permittee. The requirement for indemnification for all liability shall extend to the person, corporation, or political subdivision for which such permit shall be acquired by a Permittee acting as agent for the entity.

No permit applicant shall be entitled to a permit under this resolution unless and until he has filed and maintains on file with the District, a certificate certifying that the applicant and /or the applicant's company or business firm carries public liability and property damage insurance issued by an insurance carrier authorized to do business in the State of Arizona, insuring the applicant and the District and its agents against loss by reason of injuries to, or death of persons or damages to property arising out of or related to work performed by the applicant under this section, and shall be provided by any Permittee in the following minimum amounts or greater as determined by Risk Management:

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**COMMERCIAL GENERAL LIABILITY**

- \$2,000,000 General Aggregate
- \$2,000,000 Products/Completed Operation Aggregate
- \$1,000,000 Each Occurrence

Failure by the applicant to provide the District with such a certificate of insurance, and failure by the District to demand the filing by Permittee of such a certificate before such a permit is issued, shall not be deemed to waive Permittee's obligation to provide the insurance specified herein. Such insurance certificate shall remain in effect and be kept on file with the District until all work to be performed by the Permittee under the permit has been completed.

The insurance certificate shall provide that coverage cannot be canceled or expire without providing thirty days written notice of such action to the District, also noting the permit number.

No evidence of liability insurance shall be required as a condition precedent to the issuance of a permit to a federal, state, county or municipal agency, political subdivision, or any public service corporation with a net worth of more than \$1,000,000, as reflected by its most current balance sheet.

Issuance of permits as herein provided shall not eliminate any obligation by the applicant for any other permits that may be required by either federal, state, local or other county jurisdictions.

**BE IT FURTHER RESOLVED** that this Resolution supersedes Resolution FCD 97-02 of the Board of Directors dated September 24, 1997.

**BE IT FURTHER RESOLVED** that the effective date of the revised provisions of this Resolution shall be the date of signature by the Chairman of the Board of Directors.

**DATED** this 24<sup>th</sup> day of July 2002.

/s/ Don Stapley, Chairman of the Board

ATTEST:

/s/ Fran McCarroll, Clerk of the Board

**EXHIBIT A TO RESOLUTION FCD 2002R002  
PERMIT USE AND FEE SCHEDULE**

- |    |                                   |  |
|----|-----------------------------------|--|
| 1. | Permit Filing Fees (in all cases) | \$250.00 /application  |
| 2. | Temporary Use *                   | \$325.00 + Rent  |
| 3. | Permanent Installation Review Fee | \$650.00 /application<br>\$325.00/review for each review thereafter  |
| 4. | Inspection Fees                   | \$70.00/inspection (within 25 miles of Durango Complex)<br>\$80.00/inspection (25 to 50 miles of Durango Complex)<br>\$90.00/inspection (over 50 miles of Durango Complex) |
| 5. | Rent (if applicable) **           | \$600.00 minimum or appraised value (whichever is greater)   |

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- |    |                               |   |
|----|-------------------------------|---|
| 6. | Easement (if applicable) **   | \$600.00 minimum or appraised value (whichever is greater)                                      |
| 7. | Appraisal Fee (if applicable) | \$250.00 (in-house valuation) or actual cost if District appraisal consultants must be utilized |
| 8. | Extensions                    | \$50.00 Filing Fee + Rent and Inspection (if applicable)  |
| 9. | After-the-Fact Permit         | \$1,500.00 (assessed in addition to the above fees)   |

\* No Permanent Installation Review Fee will be assessed when the District real property is utilized for temporary use only.

\*\* Rent or Easement Fees will not be charged on existing public utility easements dedicated to the Public.

Permit Filing Fees are non-refundable. Initial Permanent Installation Review Fee covers the first submittal only and inspection fees are per trip. The number of inspection trips required is determined by the District on a case-by-case basis.

Commercial General Liability Insurance Coverage - as follows or other limits determined by Risk Management and adopted by the Board of Directors:

\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operation Aggregate  
\$1,000,000 Each Occurrence

Note: No evidence of liability insurance shall be required as a condition precedent to the issuance of a permit to federal, state, county or municipal agency, political subdivision, or any public service corporation with a net worth of more than \$1,000,000 as reflected by its most current balance sheet.

**INTERGOVERNMENTAL AGREEMENTS FOR DATA SHARING OF DIGITAL AERIAL ORTHO-  
PHOTOGRAPHY**

Motion was made by Director Brock, seconded by Director Wilcox, and unanimously approved (5-0) to approve the following Intergovernmental Agreements for the Data Sharing of Digital Aerial Ortho-Photography. The Aerial Ortho-Photography Purchase Order PG01690030104 to Landata Airborne Systems, Inc., was processed through Article 3 on December 11, 2000, for a total of \$1,291,500.

- a) FCD 2002A004 with the City of Phoenix. The total cost of the project covered in this agreement is \$194,000. The cost share is 79% for the District and 21% for the City (District: \$154,000; City: \$40,000). The IGA will remain in effect for a period of one year or completion of the project, whichever shall first occur. (C69020932)
- b) FCD 2002A007 with the City of Surprise. The cost of the project for the area of the City is \$12,892. The cost share is 50/50 for the project (District: \$6,446 and City: \$6,446). The IGA will remain in effect for a period of one year or completion of the project, whichever shall first occur. (C69021112)

**CONTRACTS FOR SERVICES**

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Motion was made by Director Brock, seconded by Director Wilcox, and unanimously approved (5-0) to award the following contracts for services. The District and the contractors will mutually agree to a detailed scope of work for each work assignment prior to the commencement of any work. A not-to-exceed fee will be negotiated for each work assignment prior to the notice to proceed with each assignment. These negotiated fees will be in accordance with the rates included as Exhibit B to the contract.

- a. JE Fuller/Hydrology & Geomorphology, Inc., Contract FCD 2000C009, On-Call Engineering, Planning, and Surveying Services. This contract is for a period of two years from the date of execution or until the contract expenditure of \$250,000, whichever occurs first. (C69021165)
- b. Tetra Tech Inc., Contract FCD 2002C010 for On-Call Engineering and FLO-2D Support Services. This contract shall be effective for two years from the date of its execution or until the contract amount of \$75,000 is expended, whichever occurs first. (C69021175)
- c. David Evans and Associates, Inc., Contract FCD 2002C014, On-Call Project Management Services. This contract will be effective for a period of two years from the date of execution or until the contract expenditure of \$250,000, whichever occurs first. (C69021185)

**LEGAL ENFORCEMENT ACTION FOR REGULATORY ABUSES**

Motion was made by Director Brock, seconded by Director Wilcox, and unanimously approved (5-0) to approve legal enforcement actions against Gerald Hill, Michael Peterson, and Dana Feather for violations of the Drainage Regulations of Maricopa County. Inspectors from the Enforcement Branch of the Regulatory Division of the Flood Control District of Maricopa County have identified violations of the Drainage Regulations on respective properties owned by Gerald Hill, Michael Peterson, and Dana Feather. Violations on all properties were discovered in 2001, or earlier, and remain unresolved as of this date. Flood Control Enforcement Branch staff has informed each of these property owners at least twice, either personally or by



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mail, that the violations remain open and require attention. (This matter was discussed in Executive Session on July 22, 2002.) (This was Addendum item F-1.) (C6903014M) (ADM1915-002)

**MEETING ADJOURNED**

There being no further business to come before the Board, the meeting was adjourned.

\_\_\_\_\_  
Don Stapley, Chairman of the Board

ATTEST:

\_\_\_\_\_  
Fran McCarroll, Clerk of the Board